IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

MFA.No. 222 of 2000(A)

OA.122/1993 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS/APPLICANTS IN O.A.:

1.MRS.ALEEMA,AGED 50,
W/O.LATE POYIL AYAMMED,PATTARATT,
P.O.NOORENTHODU, ADIVARAM, KOZHIKODE.

2.ABOOBACKER, AGED 31, S/O.LATE POYIL AYAMMED,
PATTARATT, P.O.NOORENTHODU, ADIVARAM,
KOZHIKODE.

3.AYISHA,AGED 26, D/O.LATE POYIL
AYAMMED, PATTARATT, P.O.NOORENTHODU,
ADIVARAM, KOZHIKODE.

4.FATHIMA,AGED 26, D/O.LATE POYIL AYAMMED,
PATTARATT, P.O.NOORENTHODU,ADIVARAM,
KOZHIKODE.

5.NABEESA,AGED 21,D/O.LATE POYIL AYAMMED,
PATTARATT, P.O.NOORENTHODU, ADIVARAM,
KOZHIKODE.

6.KAZIM,AGED 22, S/O.LATE POYIL AYAMMED,
PATTARATT, P.O.NOORENTHODU, ADIVARAM,
KOZHIKODE.

7.USMAN,AGED 18, S/O.LATE POYIL AYAMMED,
PATTARATT, P.O.NOORENTHODU, ADIVARAM,
KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN

M.F.A.222/2000

RESPONDENTS/RESPONDENTS IN O.A.:

1.STATE OF KERALA, REP. BY CHIEF SECRETARY, THIRUVANANTHAPURAM.

2.THE CUSTODIAN OF VESTED FORESTS, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.222 OF 2000 ()

Dated this the 12th day of July, 2007

J U D G M E N T

KOSHY,J.

Appellant petitioner approached the Forest Tribunal stating that the scheduled area in the petitioner's property was planted with cashew, coconut, arecanut, seasonal plants like tapioca, ginger etc. long prior to the appointed day and therefore it is not a private forest. Even if it is a private forest they are entitled to get exemption under Section 3(3) of the Kerala Private Forest (Vesting and Assignment) Act. No title to the property was produced to claim exemption under Section 3(3) and so it was rightly dismissed by the tribunal. No evidence of previous cultivation of the property on the appointed day was also adduced to claim exemption under Section 3(2) of the Act. Petitioner was examined as PW1 and he stated that land was taken as oral lease in 1962. First a Commissioner was appointed to inspect the property to find out

whether the land was cultivated or not. Ext.C1 report was filed by the Commissioner and Ext.C2 is the sketch. In Ext.C2 it is shown that the north western and north eastern boundary of the disputed area shown by the petitioner are vested forest. The eastern boundary of the disputed area was shown as a tribal colony and property was in possession of one Thomachan. In the petition the eastern boundary was in possession of one Mammed. According to the petitioner the northern boundary of the property is in possession of one Sadanandan. But according to the Commissioner that was a private forest vested. So the Commissioner report did not tally with the description of the property mentioned in the schedule. To substantiate the claim, petitioner produced Exts.A2 to A4 receipts. But in the receipts survey numbers are not shown. Petitioner produced Ext.A1 as well as Exts.A5 and A6 as the certificates and tribunals orders. In Exts.A5 and A6 land owners are shown as Narayananunni Nair and Sreekumaranunni Nair, where as according to the petitioner he took the property on oral lease from Koyappathodi Ahammed kutty and not from the land owners shown in Ext.A5. That also shows that identification of the property was not made. No documents were produced to show that Koyapathodi Ahammed kutty has any right over the property in question. Thereafter

the Commissioner was asked to visit the property and Ext.C3 report and Exts.C4 and C5 sketches were filed. According to Exts.C4 and C5, the petition scheduled property is shown as the property situated to the west of VFC item No.127. It is also seen from Exts.C4 and C5 that the disputed property was portion of VFC item No.126. VFC Nos.126 and 127 are situated contiguous to each other. The property in VFC item 127 is comprised in Survey No.168 whereas the property in VFC item 120 is seen to be comprised in Survey No.164 and the total area of VFC item No.120 is shown as 40.8863 hectares. Vattachira Tribal Colony is shown to be on the eastern side of the disputed property shown in Ext.C4 plan. Respondents contended that survey numbers mentioned by the Commissioner was not correct and again Commissioner filed Exts.C6 report and C7 sketch. It was found that property will come under Vested forest item No.28. A reading of the Commissioner report will show that the scheduled property was not identified. Appellant claimant has just shown some property. There was no survey stones to demarcate the schedule property claimed and there was no evidence of cultivation at any part of time.

2. If as a matter of fact there were coconut trees,

arecanut trees or pepper vines or any other kuzhikkurs or improvements effected by the first petitioner prior to 10.5.1971 then certainly that would have been seen by the Commissioner. Even though PW1 stated that there were pepper vines etc., Commissioner was not able to see anything. But there were two jack trees. There was no evidence to show that two jack trees were cultivated for more than 30 years by any human agency. Forest trees were there. After considering the Commission report and evidence adduced in this case, tribunal found that petitioner did not produce any evidence to show that he was in possession of the property and it was a cultivated property on the relevant date. The property shown by the petitioner to the Commissioner were not cultivated and therefore Tribunal came to the conclusion that the property in question was a private forest and it is vested with the Government under Section 3(1) of the Act. We see no ground to interfere in the matter and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.222 OF 2000 ()

J U D G M E N T

12th July, 2007